

THE STATE OF NEW HAMPSHIRE

DISTRICT AND MUNICIPAL COURT ADMINISTRATIVE ORDER 92-3

Pending submission to and consideration by the New Hampshire Supreme Court of proposed rules of procedure in landlord/tenant actions and effective January 1, 1993, the following procedures shall be implemented by the New Hampshire District and Municipal Court and shall apply to all cases filed after that date.

A. Failure to Answer

If the defendant fails to file an appearance, or having filed an appearance fails to appear at the hearing, then judgment shall be rendered that the plaintiff recover possession of the demanded premises and costs, and a writ of possession shall issue provided that the court mail a notice of default judgment to the defendant at the address set forth on the summons at least five (5) calendar days prior to the issuance of the writ of possession. No such default judgment shall be stricken except for good cause shown.

Cross References: RSA 540:13, V;
RSA 540:14, I.

B. Writ of Possession

If upon trial it is considered by the court that the plaintiff has sustained the complaint, judgment shall be rendered that the plaintiff recover possession of the demanded premises and costs, and a writ of possession shall issue provided that no such writ shall issue until the expiration of seven (7) days from the date on the clerk's written notice of judgment.

Cross References: RSA 540:14, I;
RSA 540:20;
Ladd v. Coleman at 128 N.H., p 543 (1986).

C. Written Decision

In deciding any contested landlord/tenant action, the court shall issue a written opinion, setting forth the basis for its decision.

Cross References: RSA 540:13, VI.

D. Appeal

1. Either party may appeal the court's ruling by filing a notice of intent to appeal in the district court within seven (7) days of the notice of judgment date. In order to perfect the appeal, a notice of appeal must be filed in the New Hampshire Supreme Court pursuant to New Hampshire Supreme Court Rule 7 within thirty (30) days of said notice date. Two copies of the appeal must be filed with the district court and one copy with opposing counsel, in addition to the original and fifteen copies required by the supreme court.

2. If, after having filed a timely notice of intent to appeal in the district court, the defendant fails to file a notice of appeal in the New Hampshire Supreme Court within thirty (30) days of the written notice of the district court's ruling, plaintiff may file a motion for the immediate issuance of a writ of possession which shall be granted without hearing unless, within five (5) days of the filing of plaintiff's motion, defendant objects to the motion, showing cause why a writ of possession shall not issue. If defendant files an objection, a hearing shall be scheduled on the motion within ten (10) days of the filing of defendant's objection.

3. If, after having filed a timely notice of intent to appeal in the district court, the plaintiff fails to file a notice of appeal in the New Hampshire Supreme Court within thirty (30) days of the written notice of the district court's ruling, the defendant may file a motion for final judgment which shall be granted without hearing unless, within five (5) days of the filing of defendant's motion, plaintiff objects to the motion, showing cause why final judgment shall not issue. If plaintiff files an objection, a hearing shall be scheduled on the motion within ten (10) days of the filing of plaintiff's objection.

Cross References: RSA 540:20;
Supreme Court Rule 7

E. Dismissal of Appeal

If the defendant fails to make a full rental payment as it comes due following the filing of a notice of intent to appeal in the district court, the plaintiff shall file an affidavit setting forth the defendant's failure to make timely payment along with a motion to dismiss defendant's appeal. A copy of the motion and

affidavit shall be filed in the supreme court. The district court shall file a written recommendation to the supreme court that the motion be granted unless, within five (5) days of the filing of plaintiff's motion, defendant files an affidavit setting forth that timely tender of payment was made or that defendant had a lawful reason for failing to tender payment. If defendant files such an affidavit in a timely manner, a hearing shall be scheduled on the motion within ten (10) days of the filing of defendant's affidavit. Following hearing, the district court shall recommend in writing to the supreme court what action should be taken on the motion.

Cross References: RSA 540:20;
RSA 540:25;
Supreme Court Rule 7.

F. Discovery

Both parties to a landlord/tenant action shall have the right to engage in discovery prior to the hearing on the merits, subject to the time frames set forth below:

1. all requests for discovery shall be made within ten (10) days of the return date;
2. responses to interrogatories, requests for admissions and production of documents must be made within fourteen (14) days after receipt of said requests; and
3. depositions shall be taken no less than three (3) days from the date of the notice of deposition and within no less than seven (7) days of the scheduled trial date.

G. Continuances for Purposes of Allowing Discovery

Upon the request of any party, the court may grant a continuance of the scheduled trial date to allow time to complete discovery. Landlord/tenant actions shall be given priority on the court's docket and, whenever possible, rescheduled within thirty (30) days.

December 30, 1992

Edwin W. Kelly
Administrative Justice